(1)

Supreme Court, U.S.
FILED

021561 APR 22 2003

OFFICE OF THE CLERK

No._____

IN THE
Supreme Court of the United States

HARRY L. BOWLES
Petitioner

vs.

HARRIS COUNTY, TEXAS
Respondent

On Petition for a Writ of Certiorari
To The United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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73 pp

QUESTIONS PRESENTED FOR REVIEW

1. **Whether a trial court has discretion to award attorney fees to defendants pursuant to 42 U.S.C. § 1988 in flagrant denial of a plaintiff citizen's right to due process of law and to equal protection of the laws under the Fourteenth Amendment.**
2. **Whether the establishment of a new criteria for the imposition of defendant attorney fees pursuant to 42 U.S.C. §1988 against civil rights litigants is constitutionally valid and in conformity with existing legal principles.**

PARTIES TO THE PROCEEDINGS

Responding

1. Petitioner is Harry L. Bowles, a private citizen of Harris County, Texas;
2. Respondent is Harris County, Texas represented below by Michael A. Stafford, County Attorney for Harris County, Texas; and Assistants Bruce S Powers and Mary E. Baker

Non-responding

3. Anthony P. Griffin, Attorney, 1115 Moody, Galveston, Texas 7550, Bowles' trial and appellate attorney;
4. Honorable David Hittner, District Court Judge, Southern District of Texas, trial court judge;
5. Honorable Chief Judge Carolyn Dineen King, Chief Judge, Fifth Circuit Court of Appeals;
6. Commissioners' Court, Harris County, TX: County Judge and Harris County Commissioners of Precinct 1, 2,3, 4;
7. Honorable Bill Archer, Retired U.S. Representative, 7th District of Texas;
8. Honorable John Culberson, U.S. Representative, 7th District of Texas;
9. Robert S. Trotter, Assistant Commissioner, U.S. Customs Service, Treasury Dept.
10. Houston Chronicle newspaper

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OPINIONS BELOW

Four opinions were issued in Bowles v. Harris County were rendered, two concerning the case in chief and two concerning defendant's motion for attorney fees:

Attorney Fees – 42 U.S.C. §1988 The opinion of the Fifth Circuit Court of Appeals dated January 22, 2003 affirming lower court is attached hereto as **APPENDIX A**. The opinion carries a notation that it should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4. The opinion of the trial court, the United States District Court, Southern District of Texas, Houston Division, dated March 22, 2002 granting defendant attorney fees, is attached hereto as **APPENDIX B**.

Case in Chief – 42 U.S.C. §1983 The opinion of the Fifth Court of Appeals affirming lower court, dated June 5, 2002, is attached hereto as **APPENDIX C**. It also carries the notation that it should not be published. The opinion of the trial court in granting summary judgment, dated July 25, 2001, is attached as **APPENDIX D.**

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). The Fifth Circuit refused rehearing of its order dated January 22, 2003.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Seventh Amendment to the United State Constitution (1791) provides in relevant part as follows: "In Suits at common

law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, - - - - ."

The above provisions in the United States Constitution are embedded in Article 1 (Bill of Rights) of he Constitution of the State of Texas as follows: Section 3 and 3a (Equal Rights and Equality under the Law); Section 13 (Excessive Bail Or Fines; Cruel And Unusual Punishment; Remedy By Due Course Of Law); Section 15 (Right Of Trial By Jury).

STATEMENT

This application for a writ of certiorari is a petition by Harry L. Bowles ("Bowles") for relief of civil liability by and through the Supreme Court's exercise of its supervisory power over the lower courts. Bowles alleges that the Fifth Court of Appeals has entered a decision in conflict with decisions rendered by all appellate courts in the nation involving the awarding of attorney fees to successful defendants in 42 U.S.C.§1983 cases. Bowles alleges that the Fifth Circuit has departed from its own accepted and usual course of considering appeals, and that it has sanctioned an equal departure by a lower court. The supervisory power of the Supreme Court must be invoked to prevent lower courts from redefining long-standing and universal threshold criteria for a court's grant of a U.S.C. §1988 motion to award attorney fees to a successful defendant in a U.S.C. §1983 action. The issue goes directly to the constitutional questions of justice by due process, equal protection and the right of trial by jury.

The case of Harry L. Bowles ("Bowles") is an illustration of a judicial system that does not conform to established law, established legal forms and requirements, or with recognized principles and accepted rules and standards. The record of the case confirms the views expressed by Judge Edith Jones of the U.S. Court of Appeals – Fifth Circuit voiced to the Federalist Society of the Harvard Law School on February 28, 2003 that, "The American legal system has been corrupted almost beyond recognition". It also confirms the views of Senior Judge Thomas M. Reavley of the U.S. Court of Appeals – Fifth Circuit expressed in an article in November 1997 issue of the Texas Bar Journal. Judge Reavley said, "Underneath the abuse and the poverty and the corruption and the failures of politics and justice, there is a deadly infection gnawing at our society. It is distrust. - - - - Who will

respect a profession that aspires to deceive and pretends that its system does justice by choosing the best liar?"

On July 1, 1996 a Texas civil district court issued a writ of attachment for Bowles to appear before a district judge in Harris County, Texas in a civil matter. He was wanted as a witness in litigation concerning his role in the organization and operation of an unconventional court, the Texas Constitutional Court ("TCC") organized pursuant to article 5, Section 11 of the Texas Constitution. The litigation concerning this court was reported in a Houston Chronicle newspaper report dated July 27, 1996 and in the statewide legal community newspaper The Texas Lawyer. The Chronicle described the TCC as the Supreme Court of the Republic of Texas, a separatist group, and identified Bowles as its "chief justice". In fact, Bowles and others associated with the TCC had no association with the Republic of Texas or any groups alleged to have filed fraudulent liens against public officials in Texas. The TCC was disbanded, basically by non-appearance and default, through a permanent injunction against Bowles and others rendered on July 27, 1996.

The plaintiffs against the TCC were the defendants in an underlying lawsuit in which Bowles sued his former business partner and his former partner's law firm for fraud and conversion. That litigation had resulted in a settlement agreement involving a partitioning of a company by a sale by a court-appointed receiver. The receivership was rife with court fraud and the Settlement Agreement was never consummated. The Houston Chronicle newspaper report dated July 28, 1996 states Bowles has filed 12 different lawsuits against the defendants in the underlying business litigation. The litigation is active and ongoing, never having been subjected to final judgment after 12 years in the courts.

After the TCC injunction proceeding had begun, Bowles left on a business trip to the Orient. Upon his return on July 28, 1996 Bowles was restrained from proceeding to Houston by a U.S. Customs Service official who placed him in the custody of the San Francisco Police Department for possible extradition to Texas on a felony arrest warrant. Bowles was released when the San Francisco police called Houston and learned Bowles could not be extradited.

Bowles discovered after years of diligent and expensive investigation that a "lookout" had been placed with the U.S. Customs Service through the National Crime Information Center (NCIC) computer system. He received this information from U. S.

Representative Bill Archer in a letter dated October 8, 1996 and through a letter of apology also dated October 6, 1996 from Robert S. Trotter of the U.S. Customs Service (**APPENDIX E**). Law enforcement officials in Houston and Harris County disclaimed knowledge of how it was that Bowles was detained in San Francisco. It was not until January 1999 that Bowles obtained information through a Privacy Act Disclosure Request (**APPENDIX F**) in which a U.S. Customs official named a specific official in the Harris County Constable's office who was the person contacted about Bowles extradition pursuant to a lookout in the Custom's computer system.

Documents in Appendix E and Appendix F constitute prima facie evidence that Bowles was subjected to false arrest in San Francisco through an action by the Houston Constable's Office by its going outside its legal jurisdiction to serve a writ of attachment. In March 2000 Bowles filed a pro se 42 U.S.C. §1983 civil rights suit against Harris County and the offending constable involved[1]. County law enforcement officials in defense denied the existence of a policy whereby the NCIC is or may be employed to trace the whereabouts of civil litigants not subject to extradition. Subsequent discovery revealed Management Control Agreements involving the Houston Police Department and Harris County Law Enforcement officials beginning in October 1993 (**APPENDIX G**). These agreements permit Harris County to access the national and Texas crime information systems and enter "lookouts" for persons wanted on felony warrants.

Bowles suit against Harris County was subjected to summary judgment on July 25, 2001 based on statute of limitations. The order states that Bowles "was clearly aware of the Constable's alleged involvement in his detention in 1996". With a two-year statute of limitations in effect, the suit filed in March 2000 was untimely filed, according to the ruling.

The attorneys for Harris County filed a request for attorneys' fees pursuant to 42 U.S.C. §1988, and the motion was granted by order dated March 22, 2002 (Appendix B). The order states that Bowles' suit was frivolous, unreasonable or groundless that Bowles offered no reliable evidence or prima facie showing in

[1] Bowles had previously appeared before the trial judge in the Southern District of Texas assigned to hear the case and, in his view, had experienced bias and discrimination. Bowles' recusal motion was denied.

support of his allegation of a violation of constitutional rights based on an official policy or custom. The Court awarded Harris County $23, 500.

The trial court initially never ruled that Bowles' §1983 action was frivolous, unreasonable, or groundless (see APPENDIX D). Also, there was no ruling that Bowles failed to present a prima facie case. In fact, the order recognizes that Bowles was detained in San Francisco regarding an arrest warrant issued in Houston, and that Bowles presented "competent summary judgment evidence" to deny entry of summary judgment. Thus, the contrast between the trial court order of July 26, 2001 and its March 22, 2002 order awarding defendant attorney fees is astonishing. Just as astonishing is the contrast between the March 22 order awarding fees and Bowles Opposition to Defendant's Motion for Attorney Fees (attached as **Appendix H**).

The Texas Constitutional Court matter and other activities have given Bowles a reputation in Harris County as a strident activist for legal reform centered on legal system fraud and corruption. Therefore he is a *persona non grata* to Harris County judges and lawyers subject to discrimination. The trial court judge exhibited flagrant bias and discrimination against Bowles by rendering judgment on the defendant's 42 U.S.C. §1988 motion. His judgment awarding attorney fees reveals his post hoc conclusion that Bowles' lacked sufficient evidence to avoid dismissal by summary judgment and that this constituted reason to declare his action frivolous, unreasonable and groundless. This is in violation of the rule of law that judges must refrain from issuing such post hoc rulings. *Riddle v. Egensperger*, 266 F.3d 542 (6th Cir. (Ohio) 2001.

The trial judge was required to render his judgment on the issue of the prevailing defendant's entitlement to attorney fees as of the time the suit was filed. *Holloway v. Walker*, 784 F.2d 1294 (5th Cir. 1986). In Bowles' case, the trial court's judgment (Appendix B) shows that the grant of attorney fees was based entirely on matters transpiring after the suit was filed and discovery completed. The order makes the statement that the Bowles' evidence in hand when the suit was filed was not prima facie evidence although it consisted of information from U.S. Congressman Archer and letters and testimony from U. S. Customs Service officials (see Appendix E & Appendix F).

Texas law regarding prima facie evidence is that it does not mean conclusive evidence, but rather is such evidence as is sufficient in law to constitute proof of a fact unless and until it is overcome, rebutted, or contradicted by other evidence. *Wininger v. State*, 117 Tex. Crim. 142, 36 S.W.2d 509 (1931), 24 Tex Jur 3d Criminal Law, § 3193. That is what the documents in Appendix E and Appendix F are. A federal court has held that, in awarding of attorney fees in civil rights cases, questions as to what allegations were made and what evidence was presented are questions of fact, and that evaluation of whether claims are frivolous, unreasonable or groundless requires evaluation of allegations and proof in light of controlling principles of law. *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 765 [2nd Cir. (N.Y.) 1998]. The Texas trial judge's ruling against Bowles that prima facie evidence of a §1983 violation was not present is contrary to controlling Texas law as expressed in *Wininger*. By ignoring facts that constitute prima facie evidence, the trial judge violated the rule of law laid out in *LeBlanc-Sternberg*. The trial judge blatantly violated his discretionary authority.

This can only be characterized as a deliberate act of redefining Texas law on an ad hoc basis to conform to the judge's basic desire to vindictively punish Bowles. A letter from Bowles' attorney, Anthony P. Griffin, dated January 29, 2003, after the Fifth Circuit's denial of Bowles' motion for rehearing states in pertinent part, "I disagreed with the panel, but it appears that a different standard is being applied to you as a litigant". This is more than abuse of discretion. It constitutes gross discrimination, invasion of Bowles' constitutional right to due process, trial by jury and equal protection of the laws.

Judicial rulings made in disregard of facts, as here, cannot be rationalized or accepted. That is the message that Judges Jones and Reavley have powerfully enunciated in their public statements charging that the courts condone perjury and "are corrupt beyond recognition."

That judges in the Southern District of Texas are not dedicated to the concept that justice should be determined by facts was documented in a Houston Chronicle report on July 21, 1997. Reporting developments in a federal class action environmental lawsuit against a major corporation in the Southern District, the report headline read: "**JUDGE KEEPS RESULT OF CITY'S WATER TESTS FROM TRIAL EVIDENCE ".** The report said

that the City of Houston paid an independent laboratory for water tests done over a four-year period, and that the tests showed no dangerous levels of contamination. The federal judge barred the tests from evidence on the plaintiffs' attorney's motion pleading there "was no foundation for the validity of the tests". The judge's action, of course, was a public display of judicial ethics unimaginably egregious and reprehensible. A public outcry resulted in the judge being forced into recusal. No charges of official misconduct were ever lodged against him and he continues to serve as a colleague of the judge in Bowles' case who, likewise, acted to exclude primary evidence from consideration in a flagrant display of bias and discrimination.

It may be inferred from the foregoing that the integrity of law in the Southern District of Texas has certainly been corrupted. Judge Edith Jones assertion that this is a national phenomenon is extremely troubling. The United States Supreme Court has a mandate to cure this critical national disease. The Bowles case offers a special opportunity because the Fifth Circuit Court of Appeals joined as a collaborator with the trial court to further the corruption. The Fifth Circuit refused to address the primary issue on appeal, which was whether or not Bowles had substantial grounds for filing his action to preclude a judgment that the suit was frivolous, unreasonable and groundless. In its failure to do so, the Fifth Circuit abruptly departed from its own accepted and usual course of considering civil rights §1988 appeals, and thereby sanctioned equal unacceptable conduct by the lower court.

The Fifth Circuit's affirmation of the District Court's judgment upholding award of defendant's attorney fees (Appendix A) states that its earlier decision affirming the summary judgment in the underlying case was "exactly because Bowles failed to present a prima facie case". It then proceeds to the conclusion that it was within the District Court's discretion to grant attorney fees in §1983 litigation where the plaintiff fails to make out a prima facie case, citing *Myers v. City of West Monroe*, 211 F.3d 289, 293 (5th Cir. 2000).

The Fifth Circuit's opinion (Appendix A) begins with the words, "Following an almost ephemeral detention, Harry Bowles filed suit against Harris County, Texas, - - - - ." There is no explanation why an "ephemeral detention" is of no legal consequence. Thereafter, the Fifth Circuit failed to review or even mention the all-important issue of whether or not Bowles' lawsuit

could legally be termed "frivolous, unreasonable or groundless". The Fifth Circuit's opinion is totally focused on the issue of Bowles' failure to present "prima facie evidence".

The fact is that neither the original trial court order granting summary judgment (Appendix D) nor the Fifth Circuit's affirming opinion (Appendix C) mention or allude to the term "prima facie evidence". The trial court's order, in reference to Bowles' summary judgment evidence, includes the statement, "Bowles, however, has not produced any evidence that the Constable, Houston Police Department or Customs, has a policy or custom of 'oral detention of citizens without warrant production'. The only competent summary judgment evidence proffered by Bowles in support of his allegation is the deposition testimony of - - - Robert S. Stiriti."

Summary judgment evidence is not prima facie evidence and vice-versa. First year law students know this. The Fifth Circuit obviously did not read the trial court's judgment in the underlying action in affirming grant of attorney fees based on Bowles' failure to have prima facie evidence in hand when he filed the §1983 action. As noted previously, and reiterated here, the rule of law is that judges must refrain from making post hoc judgments based on the conclusion that failure to overcome a motion for dismissal by summary judgment is reason to declare an action frivolous or groundless. *Riddle v. Egensperger*, supra. The trial court and the Fifth Circuit violated the rule, exhibiting bias and animosity toward Bowles.

The action by the Fifth Circuit in affirming the trial courts award of attorney fees against Bowles is in violation of the universal rule in all American federal courts, including the Fifth Circuit, that a court has discretion to award attorney fees to a prevailing civil rights defendant only upon finding that the plaintiff's action was frivolous, unreasonable, or groundless (emphasis added). . Opinions to that effect from the Fifth Circuit are *Dean v. Riser*, 240 F.3d 505 (5th Cir. 2001) and *Walker v. City of Bogalusa*, 168 F.3d 237 (5th Cir. 1999). Exceptional circumstances are required before defendants are allowed recovery of attorney fees in civil rights cases. *Sexton v. Chino Valley Ind. Fire Dept.*, 7 Fed. Appx. 660 (certiorari denied 122 S. Ct. 807, 151 L.Ed.2d 693 (9th Cir. 2001). Another federal court opinion declares that an award of attorney fees against a losing plaintiff in a civil rights action is an extreme sanction, and must be limited to

truly egregious cases. *Riddle v. Egensperger*, supra. There was nothing exceptional or egregious about Bowles' case meriting award of defendant attorney fees.

As mentioned, the Fifth Circuit declared Bowles's failure to present a prima facie case as the reason the Court affirmed imposition of attorney fees against him, citing *Myers v. City of West Monroe*, 211 F.3d 289 (5th Cir. 2000) as authority. However, the Fifth Circuit fraudulently misrepresented *Myers* as a case parallel and applicable to Bowles. *Myers*, in fact, supports the universal rule and supports reversal of the assessment of fees against Bowles. The Court's deliberate misrepresentation of authority for its opinion against Bowles cannot be rationalized in terms of ethical professional conduct. It is fraud and the legal maxim that "fraud vitiates everything" applies *South Tx Dev. Co. v. Marwick*, 328 S.W.2d 230 (Civ. App. Waco 1959).

Myers was two separate actions in one case. In *Myers*, three police officers were sued for misconduct in two separate incidents. The first incident involved a routine traffic stop by one police officer in May 1995. Plaintiff Myers paid a fine. She had no evidence of any kind to offer as proof of injury. The case against that officer was immediately dismissed as a matter of law. The facts in Bowles' case were in no way parallel or similar.

The second incident involved a stop of Myers for suspected drunk driving by two officers in December 1995. That suit went to a jury and the verdict was for the officers on allegations of illegal search of a jacket and a loss of Myers' driver's license. In considering the matter of attorney fees under 42 U.S.C. §1988, a magistrate imposed $32,000 in fees against Myers, but the Fifth Circuit reversed the judgment, declaring that Myers allegations against the two officers in the December incident were not frivolous, unreasonable or groundless and therefore the trial court had no discretion to assess §1988 defendant attorney fees against *Myers*. The universal rule applied because Myers presented some evidence to support her §1983 claim.

The same is true for Bowles. The fact is that the Fifth Circuit never considered and ruled upon the issue of whether the trial court abused its discretion in awarding attorney fees to defendants in accordance with the universal rule as it did in *Myers*. Instead, the Court redefined the universal rule to be that a trial court's finding that a plaintiff has failed to establish a prima facie

case is grounds for awarding defendant fees under §1988. This is false. The Fifth Circuit intentionally failed and refused to rule on whether or not the trial court abused its discretion in awarding attorney fees to Harris County. It failed while knowing that the judgment was based on a post hoc false conclusion. The Fifth Circuit opinion equates prima facie evidence and summary judgment proof. That is a fatal error indeed.

Conclusion

Fifth Circuit Senior Judge Thomas Reavley wrote in a public criticism of the legal system, " Who will respect a profession that aspires to deceive and pretends that its system does justice by choosing the best liar ". Was there deception and justice accorded to the best liar in Bowles' case? It is obvious there was because in the trial court's order granting summary judgment (Appendix D) it states that, "In its motion for summary judgment, Harris County argues that Bowles cannot establish the existence of an unconstitutional official policy or custom". However, among the documents Bowles was able to assemble through a Freedom of Information request is an agreement signed by all five members of the Harris County Commissioners' Court on July 24, 1996 regarding access by Harris County (as a non-criminal justice agency) of the TCIC/NCIC system operated by the Harris County Justice Information Management System. The agreement specifically states that the non-criminal agency performs all functions of the TCIC and NCIC for the criminal justice agency. (See Appendix G).

That July 24, 1996 agreement is irrefutable evidence of the existence of an official Harris County policy that permitted the entry of names into the NCIC system by the various constable offices. Bowles name appeared in the NCIC system as a result of this specific, written Harris County policy. Therefore, the trial court granted summary judgment against Bowles based on the lie that no such policy was in effect when Bowles was detained in San Francisco. Bowles was denied access to a jury in denial of his constitutional rights to due process and to trial by jury.

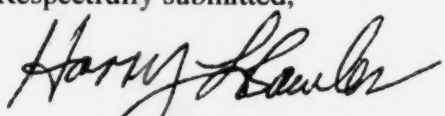
The public statements by Fifth Circuit Judges, Reavley and Jones ring true. Mendacity rules. Corruption is rampant. The public is being told that the law is only pretense and is not what is claimed for it.

REASONS FOR GRANTING THE WRIT

The Bowles case is proof that the federal Fifth Circuit Court of Appeals is not a court of resort for litigants to obtain relief from outrageous unprofessional conduct by judges and lawyers in the district courts it serves. It has decreed new criteria for when plaintiffs in §1983 suits are required to pay opposing attorney fees. The long-standing universal rule in all American courts, including the Fifth Circuit, is that the suits must be frivolous, unreasonable or groundless at the time of filing before defendant attorney fees may be imposed. The Fifth Circuit's new rule is that defendant attorney fees in §1983 suits may be assessed against plaintiffs adjudged to have lacked prima facie evidence to support their claims many months or years after the initial filing. For this purpose, prima facie evidence is redefined as evidence required to overcome any summary judgment motion by the defense made at any time during the proceedings.

The chilling effect on the initiation and prosecution of meritorious civil rights actions of the Fifth Circuit's new criteria for imposition of defendants' attorney fees will become a national policy unless the Supreme Court acts against the Fifth Circuit's abandonment of established legal principles and its dereliction of duty to review lower court judgments for conformity with those established principles. To this end the Supreme Court must exercise its supervisory and executive power to eliminate a clear and present corruption (in the Fifth Circuit and other appellate and trial courts of this nation) that threatens the integrity and credibility of the nation's system of justice.

Respectfully submitted,



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APPENDIX

Appendix A Fifth Cir. §1988 – 1/22/03 ..... 1a
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Appendix D Trial Ct. §1983 – 6/25/01 ..... 20a
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U.S. COURT OF APPEALS
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JAN22, 2003
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT 0F APPEALS FOR THE FIFTH CIRCUIT
No. 02-20547
Summary Calendar

HARRY L EOWLES
Plaintiff - Appellant
HARRIS COUNTY, TEXAS
Defendant - Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CV-1069

Before KING, Chief Judge, and DeMOSS and BENAVIDES, Circuit Judges.
PER CURIAM:[1]
Following an almost ephemeral detention, Harry Bowles filed suit against Harris County, Texas, and its constable alleging, amongst other charges, a violation of 42 U.S.C. § 1983. The district court granted summary judgment against Bowles and, pursuant to 42 U.S.C. § 1988, awarded Harris County attorneys' fees. Bowles here contests that award.
Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R.47.5.4.

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[1]Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R.47.5.4.

The district court granted summary judgment against Bowles exactly because he failed to present a prirma facie case. For the same reason, this court recently upheld that grant of summary judgment. Bowles v. Cheek, No. 01-21007 (5th Cir. Jun. 5, 2002) (unpublished) (noting the absence of any evidence tending to show a policymaker). It is well within the district court's discretion to grant attorneys' fees to prevailing defendants in § 1983 litigation where the plaintiff fails to make out a prima facie case. See Myers v. City of West Monroe, 211 F.3d 289, 293 (5th Cir. 2000) - Accordingly, the ruling of the district court is AFFIRMED.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 CAMP STREET
NEW ORLEANS, LA 70130

January 22, 2003

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW
Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc
No. 02-20547 Bowles v. Harris County Texas
USDC No. H-00 -CV-1069

Enclosed is a copy of the court' s decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)
Fed. R. App. P.'s. 39 through 41, and 5th Cir. RULES 35, 39, and 41 govern costs, rehearings, and mandates. 5th Cir. RULES 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order. Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP.P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards Applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing enbanc.
Direct: Criminal Appeals. 5th Cir. R.41 provides that a motion for a stay or mandate under Fed, R APP. P. 41 will not be granted simply upon request. The petition must sec forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.
Pro Se Cases. If you were unsuccessful in the district: court: and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. App. P. 41. The issuance of the mandate

does not affect the time, or your right, to file with the Supreme Court.

The judgment entered provides that plaintiff-appellant pay to defendant-appellee the costs on appeal.

Sincerely,
CHARLES R. FULBRUGE III, Clerk

s/ Josef Armato, Deputy Clerk

Enclosure
Mr. Anthony P Griffin Ms Debora L Perkey
Mr. Bruce S Powers

United States District Court
Southern District of Texas
FILED
MAR 22 2002
Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HARRY LOUIS BOWLES,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action # H-00-1069
	§	
HARRIS COUNTY,	§	
	§	
Defendant.	§	

ORDER

Pending before the Court is Defendant Harris County's Motion for Attorneys' Fees (Instrument # 67). Having considered the motion, submissions, and applicable law, the Court determines that the motion should be granted.

I. BACKGROUND

Plaintiff Harry Louis Bowles filed a civil rights case against Defendant Harris County. On July 25, 2001, the Court granted Defendant Harris County's Motion for Summary Judgment and entered final judgment against Plaintiff. Harris County now moves for an award of attorneys' fees pursuant to 42 U.S.C. § 1988;
In the instant motion, Harris County seeks attorneys' fees for 155 hours expended on the case by two attorneys, Mary Baker and Frank Sanders.[1] Harris

[1] The Court retains jurisdiction over the motion for attorneys' fees despite the fact that Plaintiff has appealed. *See Procter & Gamble Co. v. Amway Corp.*, 280 F.3d 519 (5th

County asserts that the appropriate fees for time spent on this case is $ 150.00 per hour for Mary Baker and $175.00 per hour for Frank Sanders. Harris County therefore moves for an award of attorneys' fees in the amount of $23,512.50 ($21,675.00 by Mary Baker, $1,837.50 by Frank Sanders).[2] Plaintiff opposes the application for attorneys' fees.

II. LAW AND ANALYSIS

A. An Award of Attorneys' Fees to a Defendant under 42 U.S.C. § 1988

42 U.S.C. § 1988 provides that in an action brought pursuant to § 1983, "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." A prevailing defendant in a civil rights lawsuit should be awarded fees only when a plaintiffs underlying claim is frivolous, unreasonable, or without foundation. *Walker v. City of Bogalusa,* 168F.3d 237,240 (5th Cir. 1999); *White v. South Park Indep. Sch. Dist.,* 693 F.2d 1163,1169-70 (5th Cir. 1982). In the case of prevailing civil rights defendants, Congress's purpose was "to protect defendants from burdensome litigation having no legal or factual basis." *Christiansburg Garment Co.* v. *EEOC,* 434 U.S. 412, 420 (1978).

Cir. 2002).

[2] In its motion, Harris County appears to inadvertently list the individual amount for Frank Sanders as $1,837.00 instead of $1,837.50.

A suit is frivolous if it is "so lacking in arguable merit as to be groundless or without foundation." *Plemer v. Parsons-Gilbane,* 713 F.2d 1127, 1140-41 (5th Cir. 1983). In determining whether a suit is frivolous, the district court should look to factors such as whether the plaintiff established *a prima facie* case and whether the court dismissed the case or held a full trial. *Myers v. City of West Monroe,* 211 F.3d 289, 292 (5th Cir. 2000).

The instant case arose out of attempts by the Harris County Precinct 5 Constable's Office (the "Constable") to serve a civil writ of attachment/bench warrant on Plaintiff. Judge Carolyn Clause Garcia issued the writ on July 1, 1996, in the case styled *Charles N. Sckwan, Jr., et al. v. Harry L. Bowles,* No. 96-22972, in the 151st Judicial District Court of Harris County, Texas. Under the terms of the writ, any sheriff or constable of the State of Texas was commanded to attach Bowles and bring him to the court. The writ was transmitted to the Constable for execution. After the Constable received information that the Plaintiff was out of the country, the Constable contacted the United States Customs Service ("Customs") and requested that Customs notify the Constable of Plaintiffs flight information upon his reentry into the United States.

On July 28, 1996, Plaintiff reentered the United States in San Francisco,

California and was detained by Customs officials inside a Customs office in the airport. During the detention, Plaintiff was not handcuffed. The Plaintiff was released after approximately 45 to 60 minutes. Although Plaintiff was released in time to make his connecting flight to Houston, Texas, he changed his flight to Dallas, Texas. Plaintiff admits that he altered his flight plans to avoid being attached pursuant to the writ upon his return to Houston. Plaintiff further admits that he went into hiding using several "safe houses" for a period of approximately six weeks after his return to Texas to avoid being attached pursuant to the writ. He used other tactics to avoid attachment, including using his mother's car instead of his own and entering and exiting his place of business at night or in the early morning. Plaintiff characterized the events of the suit as a conspiracy to detain him. Further, in a letter dated August 12, 1996, the "Texas Constitutional Court," of which Plaintiff is a named associate, accused Fifth Precinct Constable Glen Cheek and a deputy of "following the ORDERS of an illegal court, the 151st State District Court" by attempting to attach Plaintiff pursuant to the writ.

On March 13, 2000, nearly four years after the events took place, Plaintiff filed suit against Harris County and Constable Cheek alleging causes of action for deprivation of civil rights pursuant to 42 U.S.C. § 1983, false light (defamation),

and denial of equal protection. In the course of the suit Plaintiff voluntarily dismissed his claims against Constable Cheek as an individual. In addition, at the summary judgment stage, Plaintiff conceded that (1) Harris County was immune from suit for claims of false light, and (2) Plaintiff was not a member of a protected class for equal protection purposes. In its July 25, 2001 Order, the Court dismissed the suit, finding that Plaintiff's civil rights claims were time-barred by the statute of limitations and that Plaintiff could not meet his summary judgment burden of producing evidence of an unconstitutional official policy or custom in violation of § 1983.

The Court finds that the instant case was unreasonable and without foundation. In his original complaint, Plaintiff claimed that Harris County Constable Glen Cheek created a fraudulent and bogus arrest warrant and placed the warrant into the National Crime Information Center ("NCIC") computer. Plaintiff continued to make that claim until the deposition of the Federal Bureau of Investigation was taken, establishing that neither Constable Cheek nor any other individual or law enforcement agency had put his name in the NCIC computer.

After the FBI deposition, Plaintiff amended his complaint to allege that Harris County had unlawfully gained access to the United States Customs System computer,

the Treasury Enforcement Communication System. However, there was never any evidence upon which to base this allegation. Rather, the evidence demonstrated that a phone call was made to obtain information about Plaintiffs arrival in Houston so that the writ could be executed.

In its determination that this suit is groundless, the Court has weighed the following: Plaintiff was unable to make a prima facie showing, Plaintiff voluntarily dismissed one of two defendants and conceded that two of his three claims were not viable, and finally, the remaining claims were dismissed at the summary judgment stage of the proceedings. The Court concluded in its July 25, 2001 Order that Plaintiff proffered no reliable evidence in support of his allegation of a violation of constitutional rights based on an official policy or custom.

In light of the above, the Court finds that Plaintiffs claims were frivolous, unreasonable, or groundless. *See Walker v. City of Bogalusa,* 168F.3d237,240 (5th Cir. 1999). Thus, Harris County is entitled to an award of reasonable attorneys' fees.

B. Calculation of Attorneys' Fees

In the analysis of a fee request, a court must first determine the reasonable number of hours expended on the litigation and the reasonable hourly rates for the attorneys involved, then multiply the reasonable hours by the reasonable hourly rates

to calculate the "lodestar." *Louisiana Power & Light Co. v. Kellstrom,* 50 F.3d 319, 323-24 (5th Cir. 1995) (citing *Hensley v. Eckerhart,* 461 U.S. 424, 433 (1983)). The district court can then accept the lodestar, or adjust it upward or downward based upon the circumstances of the case and the factors set out in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714, 717-19 (5th Cir. 1974). *Louisiana Power & Light Co.,* 50 F.3d at 324, 329.

To determine the number of hours reasonably expended in a particular case, the "district court must determine whether the hours claimed were 'reasonably expended on the litigation.'" *Id.* (quoting *Alberti v. Klevenhagen,* 896 F.2d 927, 933-34 (5th Cir. 1990)). The "district court [] should exclude from this initial fee calculation hours that were not 'reasonably expended.'" *Hensley,* 461 U.S. at 434 (citation omitted). Accordingly, the district court should not include hours that are "excessive," "redundant," or "otherwise unnecessary." *See City of Riverside v. Rivera,* 477 U.S. 561, 569 n.4 (1986).

"[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Hensley,* 461 U.S. at 437. "[A] district court may reduce the number of hours awarded if the documentation is vague or incomplete." *Id.,* at 324 (citations omitted). Hence,

although "broad summaries" with insufficient detail are not sufficient to support a request for fees, contemporaneous billing records do not compel an award of fees *per se*. *See Powers v. Commissioner of the Internal Revenue Serv.*, 43 F.3d 172, 180 (5th Cir. 1995). Rather, to permit recovery of attorneys' fees, the district court must be satisfied that there is sufficient support to determine what hours are appropriately reimbursable.

Harris County claims 144.5 hours of work by Mary Baker and 10.5 hours by Frank Sanders. Defendant supports these claims with an affidavit and itemization of the time expended by Ms. Baker and an affidavit in explanation of time expended by Mr. Sanders. Each task entry in the itemization table for the time Ms. Baker spent on the case includes a date, a detailed description of the task, and the time allotted to that particular task. Mr. Sanders's affidavit describes 10.5 hours spent taking a deposition in Oakland, California, including travel time. The Court finds that all 155 hours were reasonably expended on the litigation by these two counsel.

The second step in a determination of reasonable attorneys' fees requires the Court to establish the appropriate hourly rate. *Louisiana Power & Light Co.*, 50 F. 3d at 327. Reasonable fees under § 1988 are calculated according to the prevailing market rates in the relevant community, regardless of whether the prevailing party is

represented by private or public counsel. *See Blum v. Stenson,* 465 U.S. 886, 895-96 (1984). Harris County argues that the customary billing rate for civil rights law practitioners in Houston, Texas, for attorneys with similar experience to Defendant's counsel, ranges from $100.00 per hour to $250.00 per hour.

The Court finds that the hourly rates of $150.00 sought by Mary Baker and $175.00 sought by Frank Sanders are within the range of fees for similar services in Harris County, Texas, and that they are appropriate and reasonable in this case. Therefore, the lodestar (i.e., the product of hours reasonably expended and the reasonable hourly rates) for the instant motion is $23,512.50 ($21,675.00 for time expended by Mary Baker, $1,837.50 for Frank Sanders).

Next, to determine if the lodestar should be adjusted, the Court considers the familiar *Johnson* factors: the time and labor required; the novelty and difficulty of the legal questions; the skill required to perform the legal service properly; the preclusion of other employment by the attorney due to the acceptance of this case; the customary fee for similar work in the community; whether the fee is fixed or contingent; time limitations imposed by the client or circumstances; the amount involved and results obtained; the experience, reputation, and ability of the attorneys; the "undesirability" of the case; the nature and length of the professional

relationship with the client; and awards in similar cases. *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). To the extent that any *Johnson* factors are subsumed in the lodestar, they should not be reconsidered when determining whether an adjustment to the lodestar is required. *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998).

There is a strong presumption that the lodestar award is the reasonable fee in a case. *City of Burlington* v. *Dague*, 505 U.S. 557, 562 (1992) (finding that the fee applicant bears the burden of showing that an enhancement is necessary to the determination of a reasonable fee). Harris County did not request an enhancement of the lodestar, nor did Plaintiff argue for a reduction based upon the *Johnson* criteria. In applying the *Johnson* factors to the application for attorneys' fees, the Court finds that neither an enhancement nor a reduction is warranted in this case. Therefore, Harris County's fee award is $23,512.50. Accordingly, the Court hereby

ORDERS that Defendant Harris County's Motion for Attorneys* Fees (Instrument # 67) is GRANTED. Harris County is awarded judgment for attorneys' fees in the amount of $23,512.50 from Plaintiff Harry Louis Bowles. The Court further

ORDERS that post-judgment interest at the rate of 3.59% shall accrue on this

amount from July 26, 2001, the date of the entry of the judgment. All relief not expressly granted herein is denied.

SIGNED at Houston, Texas, on this 22 day of March, 2002.

s/ DAVID HITTNER
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
JUN 0 5 2002
CHARLES R FULBRUGE III
CLERK

No. 01-21007
Summary Calendar

HARRY LOUIS BOWLES,
Plaintiff-Appellant,
versus
GLEN CHEEK; ET AL,
Defendants,
HARRIS COUNTY, TEXAS,
Defendant-Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDCNo.H-OO-CV-1069

Before JOLLY, JONES and STEWART, Circuit Judges

PER CURIAM:[2]

Harry Louis Bowles appeals the district court's summary-judgment dismissal of his 42 U.S.C. § 1983 claim against Harris County, Texas. Bowles contends that the district court erred in determining that his claim was time-barred and that he failed to establish the existence of an unconstitutional municipal policy or custom.

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[2] Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The Supreme Court has rejected municipal liability predicated on the doctrine of respondeat superior, as the text of 42 U.S.C. § 1983 will not bear such a reading. Piotrowski v. City of Houston. 237 F.3d 567, 578 (5th Cir.), cert, denied. 122 S. Ct. 53 (2001). "Consequently, the unconstitutional conduct must be directly attributable to the municipality through an official action or imprimatur; isolated unconstitutional actions by municipal employees will almost never trigger liability." Id.

To establish municipal liability, the following three elements must be proven: a policymaker, an official policy, and a violation of constitutional rights whose moving force is the policy or custom. Id. The policymaker for a municipality is its governing body or an official to whom that body has delegated policy-making authority. See id. at 579.

Harris County does not qualify as a municipal policymaker. Harris County is itself a municipality, not the governing body of a municipality or an official to whom such a governing body has delegated authority. See id. Neither does Harris County Precinct 5 Constable Glen Cheek qualify as a municipal policymaker. See Rhode v. Denson. 776 F.2d 107, 108-10 (5th Cir. 1985) (holding that the constable of a Texas county precinct is not a policymaker for the county). Bowles has therefore failed to establish the existence of a Harris County policymaker whose official policy was the moving force behind a violation of his constitutional rights. See Piotrowski, 237 F.3d at 578-79.

In light of the foregoing, the district court did not err in granting Harris County summary judgment on Bowles' 42 U.S.C. § 1983 claim. The judgment of the district court is AFFIRMED.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 CAMP STREET
NEW **ORLEANS,** LA 70130

June 5, 2002

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW
Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Bane
No. 01-21007 Bowles v. Harris County Texas
USDC No. H-OO-CV-1069

Enclosed is a copy of the court's decision. The court has entered judgment under FED.R.APP.P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. ' s 39 through 41, and 5THCIR. RULES 35, 39, and 41 govern costs, rehearings, and mandates. STH CIR. RULES **35 and 40 require you to attach to your petition for panel rehearing or rehearing en bane an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (lOP's) following FED.R.APP.P. 40 and STH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en bane.

Direct Criminal Appeals. 5th Cir.R. 41 provides that a motion for a stay of mandate under FED.R.APP.P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED.R.APP.P. 41. The issuance of the

mandate does not affect the time, or your right, to file with the Supreme Court.

The judgment entered provides that plaintiff-appellant pay to defendant-appellee the costs on appeal.

Sincerely,
CHARLES R. FULBRUGE III, Clerk

s/ **KRISTIN G. COWDELL,**
Deputy Clerk

Enclosure
Mr Harry L Bowles
Mr Bruce S Powers

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
ENTEREED
JUL 2 G 2001
Michael N. Milby
Clerk of Court

HARRY LOUIS BOWLES,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action # H-00-1069
	§	
HARRIS COUNTY, TEXAS	§	
	§	
Defendant.	§	

ORDER

Pending before the Court is the Motion for Summary Judgment (Instrument #53) filed by Defendant Harris County, Texas. Having considered the motion, submissions on file and applicable law, the Court determines that the motion should be granted.

The instant case arises out of the attempts by the Harris County Precinct 5 Constable's Office ("Constable") to serve a civil Writ of Attachment/Bench Warrant ("Writ") on Plaintiff Harry Louis Bowles ("Bowles"). The Writ was issued by Judge Carolyn Clause Garcia on July 1, 1996, in the case styled *Charles N. Schwarz, Jr., et al. v. Harry L. Bowles,* No. 96-22972, in the 151st Judicial District Court of Harris County, Texas. Under the terms of the Writ, any sheriff or constable of the State of Texas was commanded to attach Bowles and bring him to

 # 65 **736**

the court. *See* TEX. CRIM. PROC. CODE ANN. § 2.16 (Vernon 1996). The Writ was subsequently transmitted to the Constable for execution.

At some point thereafter, the Constable received information that Bowles was out of the country. In an effort to serve the Writ, Sergeant Carman Brumley asked Sergeant Nelson P. Foehner to contact the United States Customs Service ("Customs") in an attempt to gain information about Bowles's return to Houston, Texas. Sergeant Foehner contacted the Houston office of Customs and requested that Customs notify the Constable of Bowles's flight information upon his reentry into the United States.

On July 28, 1996, Bowles reentered the United States at the international airport in San Francisco, California and was detained by certain unnamed Customs officials. During his detention, Bowles was not handcuffed. Instead, he was merely placed in a glass room inside Customs' offices in the airport. Bowles's detention did not last long, and he was released after approximately 45 to 60 minutes.[3]

Although Bowles was released in time to make his connecting flight to Houston, Texas, Bowles instead changed his flight to Dallas, Texas. Bowles admits that he changed his flight to avoid being attached pursuant to the Writ upon his

[3] Bowles admits that he was only detained for a "short time".

return to Houston. Bowles further admits that he went into hiding using several "safe houses" for a period of approximately a month and a half after his return to Texas to avoid being attached pursuant to the Writ. Bowles went to great lengths to avoid attachment, including using his mother's car instead of his own and entering and exiting his place of business at night or in the early morning.

On March 13, 2000, nearly four years after these incidents took place, Bowles filed the instant suit. In his complaint, Bowles alleges causes of action for deprivation of civil rights pursuant to 42 U.S.C. § 1983, false light (defamation), and denial of equal protection. Bowles seeks $500,000.00 in compensatory damages, $50,000.00 in lost wages, an unspecified amount in attorneys' fees, and court costs.

Harris County now moves for summary judgment arguing that Bowles's claims are time-barred, Bowles cannot establish an official policy or custom that violates § 1983, Harris County is immune from suit for claims of false light (defamation) and Bowles is not a member of a protected class of persons for equal protection purposes. In his response, Bowles concedes Harris County's arguments regarding the claims for false light (defamation) and denial of equal protection. Accordingly, those claims are dismissed from the instant suit and the Court need not

address them any further.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. Civ. P. 56(c). Thus, summary judgment is mandated "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986); *State Farm Life Ins. Co. v. Gutterman,* 896 F.2d 116, 118 (5th Cir. 1990). Initially, the movant bears the burden of pointing out to the Court the basis for the motion and the elements of the causes of action upon which the non-movant will be unable to establish a genuine issue of material fact. *Celotex,* 477 U.S. at 323. The burden then shifts to the non-movant to establish the existence of material fact. *Id.* The non-movant "must do more than simply show that there is some metaphysical doubt as to the material facts" by "com[ing] forward with specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-7 (1986) (quoting FED. R. Civ. P. 56(e)). "A dispute about a material fact is 'genuine' if the evidence is such

that a reasonable jury could return a verdict for the nonmoving party." *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 956 (5th Cir. 1993) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

The statute of limitations for a cause of action pursuant to § 1983 is determined by the general statute of limitations governing personal injuries in the forum state. *Pete v. Metcalfe,* 8 F.3d 214, 217 (5th Cir. 1993). In Texas, the applicable limitations period is two years. Tex. Civ. Prac. & REM. CODE ANN. § 16.003(a) (Vernon Supp. 2001); *Burrell v. Newsome,* 883 F.2d 416, 418 (5th Cir. 1989). Bowles did not file the instant action until March 13, 2000. Harris County therefore argues that Bowles's cause of action is time-barred. Bowles responds that his claim did not accrue until January 26, 1999 because he did not become aware that the Constable was responsible (in Bowles's mind) for his detention until he received a Customs Privacy Act Disclosure Record ("PADR") summarizing his detention on that date.

"Accrual of a § 1983 claim is governed by federal law[.]" *Piotrowski v. City of Houston,* 237 F.3d 567, 576 (5th Cir. 2001) *("Piotrowski II").* "Under federal law, the [limitations] period begins to run 'the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been

injured.'" *Russell* v. *Ed. of Trustees,* 968 F.2d 489, 493 (5lh Cir. 1992) (quoting *Helton v. Clements,* 832 F.2d 332, 335 (5th Cir. 1987)), *quoted in Piotrowski II,* 237 F.3d at 576. "A plaintiff's awareness encompasses two elements: '(1) The existence of the injury; and (2) causation, that is, the connection between the injury and the defendant's actions.'" *Piotrowski II*, 237 F.3d at 576 (quoting *Piotrowski* v. *City of Houston,* 51 F.3d 512, 516 (5th Cir. 1995) *("Piotrowski I")*). "A plaintiff need not know that []he has a legal cause of action; []he need know only the facts that would ultimately support a claim." *Id.* (citing *Harrison* v. *United States,* 708 F.2d 1023, 1027 (5th Cir. 1983)). "Actual knowledge is not required 'if the circumstances would lead a reasonable person to investigate further.'" *Id.* (quoting *Piotrowski I,* 51 F.3d at 516); *see also Jensen v. Snellings,* 841 F.2d 600, 606 (5th Cir. 1988) ("Under federal law, the limitations period commences when 'the aggrieved party has either knowledge of the violation or notice of facts which, in the exercise of due diligence, would have led to actual knowledge' thereof." (quoting *Vigman* v. *Cmty. Nat'l Bank & Trust Co.,* 635 F.2d 455, 459 (5th Cir. 1981)).

Bowles does not contest the injury element of awareness. Rather, he contends that causation was not established until he received the PADR, at which time he was able to identify the Constable as the origin of the conspiracy to detain him. The

proffered summary judgment evidence, however, belies Bowles's argument.

Bowles admits in his deposition that, at the time of his detention in 1996, he believed the Constable was responsible for his detention. Moreover, in a letter dated August 12, 1996, the "Texas Constitutional Court," of which Bowles is a named associate, accused 5th Precinct Constable Glen Cheek and Deputy Francis Ross of "following the ORDERS of an illegal court, the 151st State District Court" by attempting to attach Bowles pursuant to the Writ. Bowles was therefore clearly aware of the Constable's alleged involvement in his detention in 1996. Accordingly, his § 1983 claim is time-barred.

Bowles tries to avoid this result by arguing that law enforcement agencies conspired to fraudulently conceal the Constable's alleged involvement in his detention. "In cases where fraudulent concealment is involved, the statute of limitations does not begin to run until the relevant facts, which are in the control of the defendant, become know to the plaintiff[.]" *Piotrowski II,* 237 F.3d at 577 n. 13.

"When a defendant controls the facts surrounding causation such that a reasonable person could not obtain the information even with a diligent investigation, a cause of action accrues, but the statute of limitations is tolled." *Piotrowski I,* 51 F.3d at 517, *quoted in Piotrowski II,* 237 F.3d at 577 n.13; *see also United States v.*

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Kubrick, 444 U.S. 111, 122 (1979); *Frazier v. Garrison Indep. Sch. Dist.*, 980 F.2d 1514, 1521-22 (5th Cir. 1993).

Bowles's reliance upon the doctrine of fraudulent concealment is completely misplaced. There is no evidence that anyone attempted to conceal the Constable's alleged involvement. Moreover, as discussed supra, Bowles was well aware of the Constable's alleged involvement in 1996. Thus, "the relevant facts" were "know[n] to the plaintiff," i.e., Bowles, at that time. *See Piotrowski II*, 237 F.3d at 577 n. 13. Further, it is uncontested that Bowles knew Customs, the author of the PADR, was responsible, at least in pan, for his detention. Had Bowles exercised due diligence in his investigation into his detention, he would have discovered the incident report from which the PADR was compiled as early as 1996. Accordingly, the doctrine of fraudulent concealment is not applicable in the instant case. Moreover, even assuming, arguendo, that Bowles's § 1983 claim survived the statute of limitations issue, it fails on the merits.

"[M]unicipal liability under section 1983 requires proof of three elements: a policymaker; an official policy; and a violation of constitutional rights whose 'moving force' is the policy or custom." *Piotrowski II*, 237 F.3d at 578 (quoting *Monell v. Dep'tofSoc. Servs.*, 436 U.S. 658, 694 (1978)). Section 1983 liability

cannot be "predicated on respondeat superior." *Id.* (citing *Ed, of Comm'rs of Bryant County v. Brown,* 520 U.S. 397, 403 (1997)). "Consequently, the unconstitutional conduct must be directly attributable to the municipality through some sort of official action or imprimatur; [] isolated unconstitutional actions by municipal employees will almost never trigger liability." *Id.* (citations omitted). In other words, "there must be both municipal culpability and causation." *Id.* at n.17 (citing *Snyder v. Trepagnier,* 142 F.3d 791, 796 (5th Cir. 1998)). "Culpability includes both the involvement of a municipal policymaker and affirmative municipal action." *Id.* "The three attribution principles ... — a policymaker, an official policy and the 'moving force' of the policy — are necessary to distinguish individual violations perpetrated by local government employees from those that can be fairly identified as action of the government itself." *Id.*

In its motion for summary judgment, Harris County argues that Bowles cannot establish the existence of an unconstitutional official policy or custom. In response, Bowles argues that cooperation between law enforcement agencies, to wit, the Constable, Houston Police Department and Customs, is an unconstitutional official policy or custom. Specifically, Bowles argues that "allowing the oral detention of citizens without warrant production" is the unconstitutional "official policy and [sic] custom

[that] caused the harm to Plaintiff."

Bowles, however, has not produced any evidence that the Constable, Houston Police Department or Customs,[4] has a policy or custom of "oral detention of citizens without warrant production." The only competent summary judgment evidence proffered by Bowles in support of his allegation is the deposition testimony of San Francisco Customs Resident Agent-in-Charge Robert S. Stiriti ("Stiriti"). The cited portion of Stiriti's deposition, however, only goes to hypothetical situations; it is completely devoid of any testimony regarding an existing unconstitutional official policy or custom. Bowles's remaining summary judgment evidence is either irrelevant, not properly authenticated, or constitutes inadmissible hearsay. Regardless of these shortcomings, none of the proffered evidence, taken alone or in toto, establishes an unconstitutional official custom or policy. Bowles has clearly not met his summary judgment burden of producing evidence of an unconstitutional official policy or custom. Accordingly, the Court hereby

ORDERS that Defendant's Motion for Summary Judgment (Instrument #53) is GRANTED. This case is DISMISSED.

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[4] The Court references the Houston Police Department and Customs only because Bowles alleges their involvement. Neither organization is before the Court in this case.

SIGNED at Houston, Texas, on this the 25 day of July, 2001.

S/ DAVID HITTNER

United States District Judge

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Congress of the United States
House of Representatives

BILL ARCHER
7TH DISTRICT,
TEXAS
CHAIRMAN
WAYS AND MEANS
COMMITTEE
JOINT COMMITTEE
ON TAXATION

October 8, 1996

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(202) 225 2571 FAX
(202) 225-4381
DISTRICT OFFICE:
10000 MEMORIAL Drive,
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77024-3490
(713) 682 8828
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Mr. Harry L. Bowles
306 Big Hollow Lane
Houston, Texas 77042

Dear Harry:

Thank you very much for your September 7th letter following up on our previous correspondence concerning your difficulties with the United States Custom Service and the San Francisco Police Department.

It is very frustrating to receive a letter like yours from a person who is having legal problems, who is not happy with the quality or ability of their legal representation and who would like to find an alternative course of action to pursuing a remedy through our legal system. Unfortunately, our legal and legislative systems are not interchangeable and there are defined limits to the extent to which a Member of Congress can become involved in such situations.

In further investigation upon receipt of your September 7th letter, I have researched current federal law and the relationship between our law enforcement agencies and the Customs Service. Under federal law, any outstanding warrants -- whether federal, state, or local -- are registered with the National Crime Enforcement Center (NCIC) and may be accessed by law enforcement authorities. Pursuant to a longstanding memorandum of understanding between the Customs Service and other law enforcement agencies, Customs inspectors and agents agree to detain for further identification any persons selected by the NCIC computer network. It is my understanding that following these procedures, the Houston Police Department requested that the Customs Service detain you for further questioning. The Customs Service notified

the San Francisco Police Department, which carried out these instructions to detain you. Customs facilitated this action until the Houston police notified San Francisco that it would not be possible to carry out an extradition order.

Your initial identification by Customs through the NCIC was unrelated to Customs' own computer system for identifying violators attempting to cross our borders. It is the position of the Customs Service that they acted within the directives of the binding memorandum of understanding with regard to federal, state, and local authorities.

I hope that this information with regard to the Customs-Service is of interest to you. I understand that, given the critical

THIS STATIONARY PRINTED ON PAPER MADE OF RECYCLED FIBERS

nature of your problems, it does not resolve your situation. However, it remains my opinion, as I expressed in my August 30th letter to you, that the resolution does indeed rest with you,
your attorney and the court system.
With best regards,

Sincerely,
S/ Bill Archer
Member of Congress

BA/nmh

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

DIS – 2 – 01 – FO : P BH

OCT 8 1990

Mr. Harry L. Bowles
306 Big Hollow Lane
Houston, Texas 77042

Dear Mr. Bowles:

Thank you for your September. 6, 1996, letter concerning the difficulties you experienced as a result of your July 28, 1996, Customs processing at the San Francisco, California, International Airport.

We certainly regret the unpleasantness and inconvenience you experienced on that occasion. However, Customs officers are charged with enforcing not only the Customs laws and regulations but also with determining whether persons entering the United States are the subjects of outstanding warrants issued by local or federal law enforcement agencies and entered by those agencies into the computerized National Crime Information Center (NCIC).

When a Customs officer queries a traveler's name into the NCIC computer and receives a positive response for an outstanding warrant, the officer has no option but to contact the enforcement agency that issued the outstanding warrant for a decision as to whether the traveler should, as in your case, be detained for further questioning and/or arrest by that agency or by local police authorities, pending extradition.

In your case, the agency issuing the warrant requested your detainment for possible arrest. Our San Francisco Customs office contacted the San Francisco Police, who detained and questioned you pending final determination by the agency issuing the warrant. That agency ultimately determined that it was not able to extradite you, and you subsequently were released.

We have queried the NCIC database and have confirmed that the warrant that created your difficulties has been removed. Although all persons, with the exception of accredited diplomats, entering the United States are subject to as thorough an inspection as is warranted to ensure that the Customs and related laws are not being violated, you now can expect to receive routine Customs processing on your future returns to the United States.

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Under the privacy provisions of the Freedom of Information Act, we are not permitted to disclose the names of the Customs officers involved in the July 28 incident. Any request for the names of the San Francisco police officers who detained and questioned you should, of course, be directed to that agency. Your concerns about what you regard as the civil nature of the warrant in question should be addressed to the agency that issued the warrant.

Should you have additional questions concerning your Customs treatment, you may wish to contact our San Francisco Port Director, Ms. Alice Rigdon, at (415) 744-7700.

In the meantime, we hope that your future contacts with the Customs Service will be pleasant and uneventful.

Sincerely,

S/ Robert S. Trotter
Acting Assistant Commissioner
Office of Field Operations

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DEPARTMENT OF THETREASURY UNITED STATES CUSTOMS SERVICE PRIVACY ACT DISCLOSURE RECORD	1. NAME OF INDIVIDUAL. Harry Louis Bowles 2. DATE OF DISCLOSURE 01/26/99 ☐ CONTINUING DIALOGUE

3. PURPOSE OF DISCLOSURE

☐ **LAW ENFORCEMENT** ☐ **BACKGROUND** ☐ **REGULATORY** ☐ **OTHER**

4. NATURE OF DISCLOSURE ***(Information Provided)***

On 1/25/99 the RAIC/SI, Robert S. Stiriti, received a telephonic request from Harry Hope, Senior I.D. Officer, Houston Police Department regarding the 07/28/96 entry into San Francisco International Airport of Harry Louis Bowles. Bowles was the subject of a TECS lookout for an outstanding TEXAS STATE WARRANT. Upon Bowles entry the Houston Constable's office was notified and stated that the warrant would be faxed to Customs and wanted Bowles held for extradition. Bowles was turned over to the San Francisco Police Department. Sgt. Brumley of the Houston Constables office called back to advise he could not extradite Bowles. Bowles was released. Bowles itinerary was forwarded to Houston.

5. NAME OF REQUESTER Harry Hope, Senior Identification Officer	6. DISCLOSURE MADE BY S/ Robert S. Stiriti, RAIC/SI
7. ADDRESS OF REQUESTER 1200 Travis, 10th Floor, Houston, Texas 77002	
8. NAME OF OFFICE Houston Police Department, Identification Division	9.TYPE OF INQUIRY
10 A. NAME OF RECORD SYSTEM TECS II	10 B. SYSTEM NUMBER 19962801001321

11. REMARKS

The above information was obtained from incident report number 19962801001321 noted above.

(IF ADDITIONAL SPACE IS NEEDED, USE REVERSE SIDE)

Customs Form 191 (021882)

GPO 947-006 TOTAL P.02

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MEMORANDUM OF UNDERSTANDING
BETWEEN
HOUSTON POLICE DEPARTMENT
AND
HARRIS COUNTY CONSTABLE, PRECINCT 5

This Memorandum of Understanding (MOU) is being executed by the Houston Police Department in conjunction with Harris County Constable, Precinct (Pct) 5. These departments agree to abide by the terms and provisions of this MOU throughout the duration of this agreement.

PURPOSE :

The purpose of this memorandum of understanding is to set out a common understanding of the policies and procedures that the Houston Police Department, and the Harris County Constable, Precinct 5 offices will follow in providing police service to the citizens of Houston, Ham's County and/or the State of Texas. This memorandum of understanding is not intended to be legally binding on any of the parties who sign this memorandum of understanding.

MISSION:

The mission of the MOU is to provide better utilization of resources by the Houston Police Department and Harris County Constable, Pct. 5. Further, it will substantially increase cooperation between these two departments eliminating waste of public resources and resulting in better accumulation of crime analysis data and ultimately in reducing crime in the Houston city limits.

SERVICES PROVIDED AND RESPONSIBILITIES OF THE HOUSTON POLICE DEPARTMENT:

- The Houston Police Department agrees to accept all suspects arrested by the Harris County Constable, Pct. 5 within the city limits of Houston within the HPD jail.
- The Houston Police Department agrees to process all juvenile suspects arrested by the Harris County Constable, Pct. 5 within the city limits of Houston within the HPD Juvenile Division.
- The Houston Police Department agrees to provide the Harris County Constable, Pct.5 full use of the HPD Identification Division facilities.
- The Houston Police Department agrees to provide evidence collection (Crime Scene Units), processing (Crime Lab

and Narcotics), and storage (Property Room) services to the Harris County Constable, Pct. 5.

- The Houston Police Department agrees to provide Harris County Constable, Pct. 5 with access to specialized services including SWAT and Helicopter.
- The Houston Police Department will be responsible for conducting all traffic accident investigations within the city limits of the city of Houston, except for the Sam Houston Toll Way main lines.

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- The Houston Police Department agrees to allow Harris County Constable, Pct. 5 radio communication access at their sole expense and as long as there is no disruption to HPD communication.
- The Houston Police Department has primary responsibility for follow-up investigation of all crimes initially investigated by the Harris County Constable, Pct. 5. Both agencies will maintain a cooperative spirit during the investigation.
- The Houston Police Department agrees to provide follow-up investigation information to the designated Harris County Constable, Pct. 5 Liaison on an as-needed basis.
- The Houston Police Department agrees to provide the Harris County Constable, Pct. 5 with the Standard Operating Procedures for HPD Patrol Operations.
- The Houston Police Department agrees to provide the Harris County Constable, Pct. 5 with access to the HPD's On Line Offense Report (OLO) System,
- The Houston Police Department will report all Uniform Crime Report statistics to the Texas Department of Public Safety.
- The Houston Police Department will provide the Harris County Constable, Pct. 5 with the programming for the HPD Laptop system.
- The Houston Police Department will provide training for Harris County Constable, Pct. 5 Training Officers to include, but not be limited to, the following areas;

OLO/Laptop Computers
Reporting System
Patrol Procedures
Evidence Collection and Storage Procedures
Identification Procedures
Jail Booking Procedures

SERVICES PROVIDED AND RESPONSIBILITIES OF THE HARRIS COUNTY CONSTABLE, PRECINCT 5:

- Harris County Constable, Pct. 5 agrees that primary responsibility for investigations will belong to the Houston Police

Department.

- Harris County Constable, Pct. 5 trainers will ensure that all Harris County Constable, Pct. 5 officers strictly adhere to Houston Police Department procedures as reflected within Harris County Constable, Pct. 5 Policy and Procedure.
- Harris County Constable, Pct. 5 supervisors will ensure that Harris County Constable,

MEMORANDUM OF UNDERSTANDING BETWEEN HOUSTON POLICE DEPARTMENT AND HARRIS COUNTY CONSTABLE, PRECINCT 5 PAGE 3

- Pct. 5 officers strictly adhere to Houston Police Department procedures as reflected within Harris County Constable, Pct. 5 Policy end Procedure.
- Harris County Constable/ Pct. 5 agrees to provide personnel in instances where the Houston Police Department is establishing specialized task forces and/or emergency situations.
- Harris County Constable, Pct. 5 agrees to coordinate warrant service with the appropriate Houston Police Department Patrol Division. This does not include traffic or other immediate arrest situations.
- Harris County Constable, Pct. 6 agrees to provide data processing equipment at Harris County Constable, Pct. 5 offices to facilitate the reporting to the Houston Police Department OLO System.
- Harris County Constable/ Pct. 5 agrees to appropriately address, consistent with the procedures established by the Houston Police Department as reflected in Harris County Constable, Pct. 5 Policy and Procedure, any incident brought to their attention requiring police services.

DURATION:

The term of this Memorandum of Understanding shall be from July 1, 1993, and will remain in effect until and unless canceled by either the Constable, for Harris County, Precinct 5 and/or the Chief of Police for the Houston Police Department. This Memorandum of Understanding shall be reviewed annually by the Harris County Constable's, Precinct 5 designee and the Houston Police Department's designee to ascertain whether it should continue and/or if any modifications should be made. If there are no changes or modifications, the MOU will continue as is until and unless modified by the mutual consent of both parties. (Note: Either party may cancel this MOU by simply notifying the other in writing of their intent to cancel the agreement with a minimum of 30 days advance notification being given).

DISAGREEMENTS:

Any disagreements between the signatory departments will be brought to the attention of the Constable, Harris County, Precinct 5 and the Chief of Police, Houston Police Department for resolution.

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Nothing in this agreement is meant to reduce the current high level of cooperation that exists between Harris County Constable[1], Precinct 5 and the Houston Police Department. Rather, it is the ongoing commitment to enhance that level of cooperation and to better serve those citizens we jointly work for.

SIGNATORIES

For the Chief of Police, Houston Police Department:

Signature *9/23/93*
Date

Chief of Police, Houston Police Department
Title

For the Constable, Harris County, Precinct 5:

Signature 10/1/93
Date

Constable, Harris County, Precinct 5
Title

HARRIS COUNTY, TEXAS

Commissioners' Court
Robert Eckles
County Judge
El Franco Lee
Commissioner Precinct I
Jim Fonteno
Commissioner Precinct 2
Steve Radack
Commissioner Precinct 3
Jerry Eversole
Commissioner Precinct 4

Adminstration Building
1001 Preston
Suite 938
Houston. Texas 77002
(713)755-5113

Management Control Agreement

This document is an agreement between the Harris County Justice Information Management System Executive Board, an oversight board consisting of a majority of criminal justice agencies, hereinafter referred to as the *criminal justice agency,.* and the Harris County Commissioners' Court. hereinafter referred to as the *non-criminal justice agency,* and acting through the Harris County Information Technology Center and the Justice Information Management System Department.

Whereas the non-criminal justice agency manages the associated computer equipment that provides the criminal justice agency with access to the Texas Law Enforcement Telecommunications System (TLETS) and the National Law Enforcement Telecommunications System (NLETS), and

Whereas the non-criminal justice agency performs all functions of the Texas Crime Information Center (TCIC) and the National Crime Information Center (NCIC) for the criminal justice agency, and

Whereas the criminal justice agency has signed agreements with the Texas Department of Public Safety to use and participate in the state's telecommunications network, and

Whereas the state transmits state and national criminal history information over those networks, and

Whereas the state participates in the National Crime Information Center, which requires that:

All computers, electronic switches, and manual terminals interfaced directly with the NCIC computer for the interstate exchange of criminal history information must be under the management control of criminal justice agencies and, similarly, that satellite computers and manual terminals accessing NCIC through a control terminal agency computer must be under the management control of a criminal justice agency, and

Whereas management control is defined as the authority to set and enforce:

(1) priorities;

(2) standards for the selection, supervision and termination of personnel; and -

(3) policy governing the operation of computers, circuits and telecommunication terminals used to process criminal history record information insofar as the equipment is used to process, store, or transmit criminal history record information, and

EXHIBIT # 1
CLERK

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Whereas management control includes, but is not limited to, the supervision of equipment, systems design, programming and operating procedures necessary for the development and implementation of the computerized criminal history program, such management control guaranteeing the priority service need by the criminal justice community.

Therefore, be it resolved **that this agreement hereby places the data processing activity under the management control, *as herein defined*, of the criminal justice agency.**

The non-criminal justice agency agrees to abide by all current and hereafter approved rules of the Texas and National Law Enforcement Telecommunications Systems and of the Texas and National Crime Information Centers, including but not limited to all requirements of the NCIC Security Policy. The compliance with those requirements shall be determined by the criminal justice agency and TCIC.

The non-criminal justice agency agrees to allow the criminal justice agency and TCIC access as determined by TCIC and the criminal justice agency to the physical locations, computer programs, computer files and computer activities necessary to implement and enforce this agreement.

Computers having access to TCIC/NCIC must have the proper software and hardware controls, implemented under the supervision of the criminal justice agency, to prevent criminal history data from being accessible by any terminals other than authorized terminals.

The non-criminal justice agency must have adequate physical security, as determined by the criminal justice agency, to protect against any unauthorized personnel gaining access to the terminals, computer equipment or any of the stored data.

Personnel at the non-criminal justice site must be screened thoroughly under the authority and supervision of the criminal justice agency, in accordance with TCIC/NCIC policy. This screening applies to criminal justice and non-criminal justice personnel, including non-criminal justice maintenance and technical personnel. This screening will be done under the guidelines established in the NCIC Security Policy.

No dial-up access will be permitted to a computer or a terminal with access to the state's law enforcement network unless that dial-

up access has been approved by the criminal justice agency and the state.

No terminal will access the state's law enforcement networks, and no data will be requested or obtained through those networks, without the approval of the criminal justice agency.

The criminal justice agency, in accordance with TCIC/NCIC policy, has the responsibility and authority to monitor, audit and enforce the implementation of this agreement by the non -criminal justice agency.

Further, the non-criminal justice agency agrees not to purchase, install, affix, employ, test, or add any software or hardware that would secure the software, hardware, or data from access by the criminal justice agency without first seeking the approval of the criminal justice agency.

The non-criminal justice agency agrees to cooperate with the criminal justice agency in the implementation of this agreement, and to accomplish the directives of the criminal justice agency under the provisions of this agreement.

A description of procedures that shall be used to implement this agreement submitted by the criminal justice agency and the non-criminal justice agency includes, but is net limited to, the attached Appendices A, B and C.

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Either party may terminate this agreement for any reason upon 30 days written notice to the other party. Upon termination of this agreement, the criminal justice agency shall immediately so notify the Chief of the Crime records Division of the Texas Department of Public safety.

Criminal Justice Agency	Non-Criminal Justice Agency
S/ Chair , J.L.M.S. Executive Board	s/County Judge, Harris County
Jul 22, 1996	24, July, 1996
Date	Date

Rev. 7/11/96

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APPENDIX A

"Appropriate security measures" include:

a. A backup power supply or uninterruptible power supply.

b. Environment monitors and controls for temperature, air conditioning, humidity, etc.

c. Emergency lighting.

d. Adequate fire detection/suppression devices.

e. Emergency shutdown of system and/or power devices.

f. Off-site maintenance (storage) of duplicate computer files as a countermeasure for unauthorized destruction of original files. Computer tapes or disks shall be locked in a safe (fireproof) storage area under the control of senior agency personnel. Secondary storage (off-site location) will be used to back up.

APPENDIX B

The standards apply to all Center personnel with access to network systems as defined in Title 28 CFR, Part 20 to CHRI data, including, but not limited to:

a. Management personnel who direct criminal justice related software or hardware functions.

b. Supervisory personnel who supervise criminal justice related software or hardware functions; or who have terminal access to criminal justice data either directly or through their subordinates; or who have general responsibility for criminal justice related data storage, switching, transmission and legging

c. Personnel involved in analysis, evaluation and programming of criminal justice related data that is stored, switched, transmitted or logged by the Center.)

d Non-data processing personnel who regularly provide necessary software or hardware installation, modification or maintenance in the data processing operations room.

c. Non-data processing personnel who provide temporary and necessary software, hardware or
telecommunications installation, modification or maintenance or such services as deemed necessary by
the data processing manager.'

f. All other persons with direct access to the computer operations room or computer terminals with CHRJ capabilities.

APPENDIX C

These standards for selection shall be incorporated in position descriptions of affected employees. In compliance with the provisions of Texas statutes and TCIC Administrative Regulations any employee with access to TCIC/NCIC in any manner:

a. Shall have never been convicted of a felony.

b Shall be of good character and have consistently demonstrated personal integrity, an understanding of circumstances which tend to breach the security of a computerized systems, and a respect for the individual rights of others.

c- Shall have consistently demonstrated fiscal responsibility, abstinence from use of illegal non-prescription drugs and participation in illegal gambling, moderation in the use of alcoholic beverages and prescription drugs, and an understanding of the potential for compromising system security and/or violation of statute or regulation by related irresponsible, illegal or abusive acts.

1. For the purpose of this requirement, persons who have successfully completed rehabilitation therapy for alcohol or drug dependency and demonstrate a continuing lack of dependence may

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be deemed acceptable only after concurrence by the parties to this agreement that such prior dependency is unlikely to constitute a substantial security risk.

2- Lack of fiscal responsibility is indicated by consistently paying bills late, maintaining an abnormally high debt/income- ratio, routinely writing insufficient-fund checks, forgery and/or exercising bankruptcy without extenuating circumstances.

d. Shall have voluntarily signed a nondisclosure agreement, that contains a statement of the employee's understanding of all applicable state regulations and policies and the policies for their violation.

e. Shall be disqualified for any material omission or falsification on employee application or personal history statement

Conformance to the above standards for selection will be determined by background investigations conducted by the District Attorney and the non-criminal justice agency (data processing manager). ***Upon completion of such investigation, the conclusions shall be forwarded to the data processing manager within five (S) working days after completion. The data processing manager will, in turn, review the investigation results and hiring decision with the criminal justice agency for concurrence. (In cases of dispute concerning the hiring of a particular applicant the criminal justice agency's position, with just cause will prevail).*** Persons who do not meet the above described standards shall not be employed in any capacity described in (a) through (f) in Appendix B.

Background investigations shall include:

a. Submission of a complete set of the applicant's fingerprint impressions to the proper authority.

b. Completion of a Personal History Statement (application) is prescribed by the criminal justice agency, in which a statement regarding falsification and/or omission shall be signed by the applicant.

c. Collecting and verifying data (CCH, et. al.) that supports, reflects or mitigates facts and circumstances of the applicant's

background, which are material to achievement of security goals and compliance with applicable law, regulation and policy.

d. When possible, personal interviews of references, associates, acquaintances and former employers, as well as the applicant

e. Conclusions, both favorable and unfavorable, that are fully and objectively supported in terms of job- relatedness and security considerations and that are contained in a final report to the criminal justice agency.

f. Verification of academic and credit information, which shall be considered material to the background investigation and a determination of the applicant's suitability for employment.

g. A voluntarily signed non-disclosure agreement.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HARRY LOUIS BOWLES,
PLAINTIFF,

V. CIVIL ACTION NO
H-00-1069

HARRIS COUNTY,
DEFENDANT.

PLAINTIFF'S, HARRY LOUIS BOWLES',
OPPOSITION TO
DEFENDANT'S MOTION FOR ATTORNEYS' FEES

Plaintiff, Harry Louis Bowles, files this his opposition to Defendant's Motion for Attorney Fees. Plaintiff would show unto the Court as follows, to-wit

1. Plaintiff would dispute the action brought by the Plaintiff was frivolous, reasonable and groundless *Christianburg Garmet Co. v. EEOC,* 434 U.S. 412, 98 S.Ct. 694, 701 (1978). It is clear that on July 28, 1996, Plaintiff entered the country at the San

Francisco International Airport, was detained, and placed under arrest by the United States Customs (Customs). Customs then in turn turned Plaintiff over to the San Francisco Police Department. Plaintiff was placed under arrest and not able to leave on his own free will.

After Bowies' arrest, Bowles began an effort to determine who instructed his illegal arrest. Plaintiff wrote to his Congressman, Bill Archer, on September 7, 1996. Congressman Archer in response to Bowies' letter, explained, "[i]t is my understanding that following these procedures, the Houston Police Department required that the Customs Service detain you for furthering questioning. The Customs Service notified the San Francisco Police Department, which carried out these instructions to detain you. Customs facilitated this action until the Houston Police notified San Francisco that it would not be possible to

carry out an extradition order." Congressman Archer also related that the entry was in the NCIC system.

On December 26, 1996, the Houston Police Department, through the City Attorney's Office wrote the Plaintiff and informed the Plaintiff that it possessed no information with respect to the Houston Police Department entering the Plaintiff s name in the NCIC system. The Defendant makes an argument that the Plaintiff initially alleged the entry was in the NCIC system and later modified his allegations to assert a wrongful entry into the Custom's system.

After an extensive letter writing and open records requests campaign, the Plaintiff was able to obtain proof that the Defendant was responsible for his illegal arrest. It was not until February 23, 1999, that the Plaintiff received a letter from the Chief of Police, C.O. Bradford, that provided the following information that revealed for the first time that the

Plaintiff's suspicious were accurate. It should be noted"that the Court's determination of statute of limitation bars any viable cause of action but it does not follow that the action was frivolous, unreasonable and groundless, particularly in light of an unexplained arrest (whether the arrest meets the section 1983 requirements or not). It should also be shown that the Defendant's expert, Commander Albert Rodriguez, admitted that the allegations asserted were not frivolous, unreasonable or groundless.

Plaintiff objects to the award of attorney fees in this matter.

DATE: 8/20/2001

Respectfully submitted,

S/ ANTHONY P. GRIFFIN
ANTHONY P. GRIFFIN, INC
LAWYERS
1115 MOODY
GALVESTON, TEXAS 77550
409.763.0386
1.800.750.5034
409.763.4102
STATE BAR NO. 08455300

CERTIFICATE OF SERVICE

This is to certify that on this 20 day of _____, 2001,the foregoing Plaintiff's Opposition to the Defendant's Motion for Attorney Fees and Costs and was forwarding to opposing counsel by certified mail/ return receipt requested, postage prepaid, to-wit:

MARY E. BAKER
ASSISTANT COUNTY ATTORNEY
MICHAEL A. STAFFORD
HARRIS COUNTY ATTORNEY
OFFICE OF THE COUNTY ATTORNEY
1019 CONGRESS, 15TH FLOOR HOUSTON, TEXAS 77002-1700
CERTIFIED MAIL, RRR NO. 7099 3400 1667 8353

S/ ANTHONY P. GRIFFIN

c:bowles-harry.oppositionfees